

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Provision of Directory Listing Information)
Under the Communications Act of 1934,)
As Amended)

CC Docket No. 99-273

REPLY COMMENTS OF THE ASSOCIATION OF DIRECTORY PUBLISHERS

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SUMMARY

As reflected in the comments filed in response to the Notice, as well as the separate statements of Commissioners Susan Ness and Harold Furchtgott-Roth, the Commission should conclude that directory publishers may publish subscriber list information obtained pursuant to section 222(e) of the Act in Internet directories. Moreover, the Commission should not permit resolution of other issues addressed in the Notice, such as those concerning directory assistance, to delay release of such an order.

As the Commission recognized in the Third Report and Order, without guidance regarding their obligations under section 222(e), LECs will continue to engage in unfair and anticompetitive practices in order to stymie their independent competitors' efforts to develop useful and innovative directories, such as Internet directories. Thus, Commission action is warranted and necessary.

In addition, the Commission should prohibit LECs from imposing technical or other restrictions on the use of subscriber list information in Internet directories. Instead, publishers should be permitted to determine the best methods to prevent downloading of listings or use of listing for non-directory purposes by third parties. In sum, the Commission should not permit LECs to dictate the form that independent publishers' Internet directory offerings will take, just as they are not permitted to do so with respect to traditional printed directories.

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The Association of Directory Publishers ("ADP"), by its attorneys, hereby submits its Reply Comments in the above-captioned proceeding.¹

I. THE COMMISSION SHOULD PROMPTLY RELEASE AN ORDER STATING THAT DIRECTORY PUBLISHERS MAY USE SLI FOR PUBLICATION IN INTERNET DIRECTORIES.

In the Notice, the Commission asked whether publishers may obtain subscriber list information ("SLI") under section 222(e) of the Communications Act, as amended, for use in Internet directories.² The comments filed in response to the Notice resoundingly support such a conclusion.³ For example, Cincinnati Bell stated that "Internet databases are a format or method by which publishers can make subscriber list information available to the general public," and that "nothing in the language of § 222(e) or other sections of

¹ In re Provision of Directory Listing Information Under the Communications Act of 1934, as Amended, CC Docket No. 99-273, Notice of Proposed Rulemaking, FCC 99-227 (rel. Sept. 9, 1999) ("Notice").

² Notice, at ¶ 173.

³ See Bell Atlantic Comments, at 1; Cincinnati Bell Comments, at 2-3; GTE Comments, at 3; Listing Services Solutions, Inc. Comments, at 31; MCI Worldcom Comments, at 6; Metro One Telecommunications Comments, at 8.

the Act indicate that Congress intended to exclude electronic formats, including Internet databases, from the types of publication methods available for use by directory publishers."⁴ GTE also agreed that "the posting of subscriber list information on the Internet fairly falls within the express language of Section 222(e) as a form of directory publishing. Such a reading is consistent not only with the statutory objective of that section, but also the broader purposes of the Act."⁵ Thus, the comments -- as well as the separate statements of two Commissioners -- overwhelmingly support a conclusion that section 222(e) encompasses Internet directories.

The Commission should make clear that directory publishers may use SLI obtained pursuant to section 222(e) in Internet directories and should not permit resolution of other issues raised in the Notice to delay release of such an order. For example, there was substantial disagreement among commenters concerning whether section 222(e) contemplates use of SLI for directory assistance. Most LECs who commented argued that directory publishing and directory assistance are mutually exclusive categories in the Act, and, therefore, Congress did not intend to apply section 222(e) to directory assistance.⁶ On the other hand, independent directory assistance providers such as INFONXX argued that they should be entitled to use SLI obtained pursuant to section 222(e) and/or section 251(b)(3) for directory assistance.⁷ To further complicate matters, however, these commenters rejected the presumptive benchmarks rates for SLI, instead

⁴ Cincinnati Bell Comments, at 2-3.

⁵ GTE Comments, at 2-3.

⁶ See, e.g., Bell Atlantic Comments, at 7; GTE Comments, at 5.

⁷ See, e.g., INFONXX Comments, at 6-7, 27; Telegate Comments, at 4-5.

requesting rates based on incremental cost,⁸ a notion rejected by the Commission in the Third Report and Order.⁹ It is likely that *ex parte* meetings and filings will be required to resolve these and other issues concerning directory assistance. Thus, the Commission should not permit the resolution of these issues to delay an order permitting directory publishers to use SLI in Internet directories, and should issue a separate order addressing Internet directories prior to resolving these issues.

The only objections to the conclusion that Congress intended SLI to be used for Internet directories under section 222(e) were generalized statements that any additional regulations implementing section 222(e) are unnecessary.¹⁰ These statements could not be further from the truth. As the Commission observed in the Third Report and Order, "despite the enactment of section 222(e), LECs continue to engage in unfair and anticompetitive subscriber list information practices," and "the ability of independent directory publishers to improve customer service and to develop new products, including more advanced Internet directories, is dependent on telecommunications carriers' understanding and complying with their obligations under section 222(e)."¹¹ While many LECs recognize, appropriately, that section 222(e) encompasses publication of SLI in

⁸ See, e.g., INFONXX Comments, at 31-32; Listing Services Solutions, Inc. Comments, at 29; Metro One Telecommunications Comments, at 11-12. But see Teltrust Comments, at 16 (It is logical to conclude that the price for SLI under section 222(e) should be substantially the same as the price for providing DA data under section 251(b)(3).).

⁹ Third Report and Order, at ¶ 85.

¹⁰ See USTA Comments, at 4; US WEST Comments, at 4.

¹¹ Third Report and Order, at ¶¶ 4-5 (emphasis added).

Internet directories,¹² there are some LECs, such as BellSouth, which will not permit publishers to use SLI in Internet directories under reasonable and non-discriminatory terms.¹³ Thus, further action by the Commission is needed.

Moreover, the Commission should act promptly. Section 222(e) became effective upon its enactment in February 1996; however, it has taken the Commission more than three years to release an order implementing this provision. During this period, LECs took advantage of the uncertainty and continued to engage in anticompetitive practices. The Commission should not permit the same abuses to occur with respect to Internet directories.

II. THE COMMISSION SHOULD PROHIBIT TECHNICAL OR OTHER RESTRICTIONS ON THE USE OF SLI IN INTERNET DIRECTORIES.

Several LECs asserted that technical restrictions designed to prohibit third parties from viewing or downloading a large number of listings by a single command are necessary to protect the LECs' SLI from resale or non-directory uses.¹⁴ ADP disagrees. The Commission previously recognized that in enacting section 222(e), Congress intended that carriers not use their control over SLI to impede competition in directory publishing.¹⁵ If LECs are permitted to exert control over the format of publishers' Internet

¹² See Bell Atlantic Comments, at 1; Cincinnati Bell Comments, at 2-3; GTE Comments, at 3.

¹³ US WEST is incorrect that Internet directory publishers are only charged value-based prices for SLI for use in Internet directories in Florida. See US WEST Comments, at 4. In fact, BellSouth requires publishers to pay excessive prices for SLI for use in Internet directories in other states in which it offers SLI under tariff. Notably, BellSouth did not file comments in response to the Notice in this proceeding.

¹⁴ Bell Atlantic Comments, at 1-2; Cincinnati Bell Comments, at 4-5.

¹⁵ Third Report and Order, at ¶ 115.

offerings through technical and other restrictions, they will be tempted to impose anticompetitive restrictions, particularly if they offer competing Internet directory services. Instead, publishers should be permitted to determine the best methods to prevent downloading of listings by third parties (such as through use of a read-only format), not the LECs.¹⁶ If a LEC discovers that a publisher is reselling SLI or using it (or permitting it be used) for non-directory publishing purposes, the LEC may, of course, file a complaint under section 208.¹⁷

Moreover, consistent with the Third Report and Order, LECs may require publishers to certify that they will institute measures to prevent downloading or use by third parties.¹⁸ However, the method of preventing downloading or use by third parties should be left to the discretion of the publisher. The Commission should not permit LECs to dictate the form that independent publishers' Internet directory offerings will take, just as they are not permitted to do so with respect to traditional printed directories.

¹⁶ Id. at ¶ 109.

¹⁷ Id. at ¶ 115

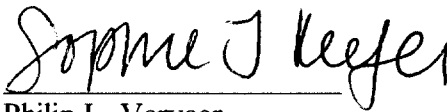
¹⁸ Id. at ¶ 113.

III. CONCLUSION.

For the foregoing reasons, ADP urges the Commission to promptly release an order making clear that directory publishers may use SLI obtained pursuant to section 222(e) for use in Internet directories and prohibiting LECs from imposing unnecessary technical or other restrictions on such use.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Trisha A. McLean, do hereby certify that on this 28th day of October, 1999, copies of the foregoing Reply Comments of the Association of Directory Publishers were hand delivered to the following parties:

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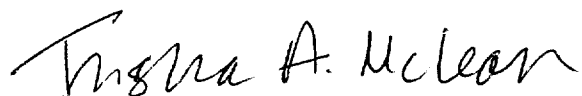
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